

## **REMARKS**

Claims 1-20 were examined. Applicant has amended claims 1 and 5 and cancelled claims 4 and 6. No new matter has been introduced.

### **Double Patenting Rejections**

Claims 1-3, 10-16, 19-20 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-18 of US 6,470,216.

Without acquiescing to the assertions made by the examiner and simply to expedited prosecution of the instant application, Applicants have attached a Terminal Disclaimer to overcome this rejection.

Claims 1-20 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending application no. 10/813,980.

Applicants maintain that since the instant application and U.S. Patent Application Serial No. 10/813,980 is still pending, the rejection is "provisional." Applicants will address this rejection further after a notice concerning the allowable subject matter in the present application has been received.

### **Rejections under 35 USC §102**

Claims 1-20 stand rejected under §102(b) as being anticipated by Knowlton (6,350,276).

The Applicant respectfully traverses the rejection and maintains that Knowlton '276 does not teach or suggest each and every limitation of the claimed invention as is required by law. Nevertheless, without acquiescing to the Examiner's assertion and solely for the purpose of expediting the prosecution of the present application, the Applicant has amended Claim 1 to read:

Claim 1. A method of treating a target tissue site, the method comprising:  
selecting the tissue site based on a tissue profile or condition of the tissue site;  
using an energy delivery device to apply a combination of energy treatments delivered to different tissue depths;  
delivering energy to the tissue site at a first depth to achieve a first tissue effect; wherein the first tissue effect is a two dimensional tightening of the skin surface;  
delivering energy to the tissue site at a second depth to achieve a second tissue effect; wherein the second tissue effect is a three dimensional tissue repositioning or inward contouring; and  
remodeling at least a portion of tissue at the tissue site.

The '276 patent teaches a method and apparatus to tighten skin without major surgical intervention. In an effort to tighten skin with controlled remodeling of collagen, the '276 patent discloses a method that delivers a mechanical force and electromagnetic energy to a tissue site to change a skin surface. A further object of the '276 patent is to provide a method and apparatus that delivers a mechanical force and electromagnetic energy to a tissue site to change the contour of a soft tissue structure. (col. 2, lines 20-34)

Applicants submit that the '276 patent not disclose a method for treating tissue using a combination of energy treatments delivered to different tissue depths. Support for "a combination of energy treatments delivered to different tissue depths" can be found on page 80 of the instant specification in the paragraph beginning at line 14.

Regarding Claim 1 of the instant application, the Examiner asserts that "Knowlton ['276 patent] discloses a method of treating a target tissue site, the method comprising identifying/selecting the tissue site based on a tissue profile or condition/deformity of the tissue site (col. 2, lines 19-46; col. 12, lines 50-67; col. 13, lines 35-47 and col. 14, lines 19-54); delivering energy to the tissue site at a first depth to achieve a first tissue effect using an energy delivery device (col. 2, lines 20-34); delivering energy to the tissue site at a second depth to achieve a second tissue effect using an energy delivery device (col. 2, lines 20-34); and remodeling at least a portion of tissue at the tissue site (col. 2, lines 19-46; col 8, lines 11-30 and claim 1)." (Pages 3-4 of the instant Final Office Action).

Applicants maintain that the '276 patent does not disclose a method for treating tissue using a combination of energy treatments delivered to different tissue depths. The relevant disclosure of the '276 patent at col. 2, lines 28-34 merely teaches a method and apparatus that "delivers a mechanical force and electromagnetic energy to a tissue site". Moreover, the '276 patent does not teach "delivering energy to the tissue site at a second depth to achieve a second tissue effect; wherein the second tissue effect is a three dimensional tissue repositioning or inward contouring," as in claim 1 of the instant application.

The Examiner asserts that, "[r]egarding claim 5, Knowlton ['276 patent] further disclose the second tissue effect is at least one of thermal lipolysis, three dimensional inward contouring, or three dimensional inward contouring of convex deformities, see col. 2, lines 19-46, col. 8, lines 11-30 and claim 1." (Page 4 of the instant Final Office Action). The Examiner further asserts that, "[r]egarding claim 6, Knowlton ['276 patent] further disclose the second tissue effect is at least one of thermal contraction of the fibrous septae, thermal contraction of muscle, thermal contraction of fascia, skeletonization of the fibrous septae, three dimensional tissue repositioning, or three dimensional deep tissue repositioning of convex deformities, see col. 2, lines 6-16 and col. 6, lines 49-57, and col. 10, lines 36-53. (Page 4 of the instant Final Office Action).

Applicants respectfully disagree and submit that the '276 patent discloses in col. 8, lines 21-30 that "**[t]he combined delivery of electromagnetic energy and a mechanical force is used to create a three-dimensional contouring of the soft tissue structure.**" However, this does not anticipate the instantly claimed method for treating tissue using a combination of energy treatments delivered to different tissue depths. In fact, the '276 patent goes on to emphasize the role of the mechanical force in achieving the tissue effects in stating "[t]he amount of mechanical force applied by mechanical force application surface 14 can be selectable to meet one or more of the following criteria: (i) sufficient to achieve a smoothing effect of the skin surface, (ii) can be less than the tensile strength of collagen in tissue and (iii) sufficient to create force vectors that cleave collagen cross-links to remodel collagen containing structures."

Further, Applicants submit that Claim 1 of the '276 patent merely discloses an apparatus that comprises

a template comprising a layer that is made of semiconductive material and has a curved skin interface surface that substantially conforms to the general three-dimensional contour of the soft tissue structure

This disclosure does not support the Examiner's assertion that Knowlton ['276 patent] disclose a second tissue effect comprising at least one of thermal lipolysis, three dimensional inward contouring, or three dimensional inward contouring of convex deformities. In this instance, the "three-dimensional contour of the soft tissue structure" simply refers to the apparatus having a curved skin interface surface that substantially conforms anatomical structures being treated.

Nevertheless, Applicants wish to emphasize the point that the "three-dimensional contouring of the soft tissue structure" disclosed in the '276 patent (col. 8, lines 21-23) occurs as a result of a "combined delivery of electromagnetic energy and a mechanical force." The '276 patent does not teach achieving a second tissue effect as a result of a combination of energy treatments delivered to different tissue depths or that the second tissue effect, such as three dimensional tissue repositioning or inward contouring, occurs as a direct result of delivering energy to this tissue depth.

With respect to the other sections of the '276 patent referenced by the Examiner, Applicants submit that within col. 2, lines 6-16 the '276 patent merely states that a "need exists to provide a method and apparatus for the controlled remodeling of collagen in tandem with subcutaneous fat ablation in which a net tightening of the skin envelope occurs with an esthetic contour reduction." This does not anticipate the instantly claimed method for treating tissue using a combination of energy treatments delivered to different tissue depths.

Applicants submit that within col. 6, lines 49-57 the '276 patent merely states

Template 12 can deliver both electromagnetic energy and mechanical force to the selected tissue or anatomical structure 9. Suitable anatomical structures 9 include, but are not limited to, hips, buttocks, thighs, calves, knees, ankles, feet, perineum, the abdomen, chest, back flanks, waistline, legs, arms, legs, arms, wrists, upper arms, axilla, elbows, eyelids, face, neck, ears, nose, lips, cheeks, forehead, hands, breasts and the like. In

various embodiments, tissue structure 9 includes any collagen containing tissue structure.

Once again, this combination of electromagnetic energy and mechanical force does not anticipate the instantly claimed method for treating tissue using a combination of energy treatments delivered to different tissue depths.

Applicants cannot identify any relevant support for the Examiner's argument within col. 10, lines 36-53 of the '276 patent.

Finally, Applicants submit that the instant application discloses that deeper energy deliveries can be configured to achieve one or more of the following tissue effects: i) thermal contraction of one more of the fibrous septae, fascia and muscle with three dimensional deep tissue repositioning of convex aesthetic deformities; and ii) thermal lipolysis with three dimensional inward contouring of convex aesthetic deformities. Regardless of any similarity in common terms, the '276 patent does not disclose a method for treating tissue using a combination of energy treatments delivered to different tissue depths to achieve these tissue effects.

Accordingly, since the instant claims are not anticipated by Knowlton, Applicants respectfully request withdrawal of the present rejection.

### **CONCLUSION**

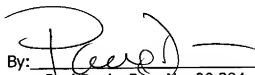
Applicant believes that the application is in condition for allowance. The Commissioner is authorized to charge Deposit Account 08-1641 for any payment due in connection with this paper, including petition fees and extension of time fees.

Respectfully submitted,  
HELLER EHRMAN LLP

Date: \_\_\_\_\_

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